COURT, U. S.
NOV 24 19[illegible]
[illegible]NUS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1961

No. 502

WISCONSIN BANKERS ASSOCIATION,
a Wisconsin corporation, and
THE AMERICAN EXCHANGE BANK,
a Wisconsin banking corporation, and
COMMERCIAL STATE BANK,
a Wisconsin banking corporation, and
GRAFTON STATE BANK,
a Wisconsin banking corporation, and
THE BANK OF COMMERCE,
a Wisconsin banking corporation, and
KENOSHA NATIONAL BANK,
a National banking association organized and existing under the laws of the United States of America,

Plaintiffs-Petitioners,

vs.

ALBERT J. ROBERTSON, IRA DIXON, and WILLIAM J. HALLAHAN, comprising the FEDERAL HOME LOAN BANK BOARD, Washington, D. C.,

Defendants-Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

REPLY BRIEF FOR PLAINTIFFS-PETITIONERS

HARVEY W. PETERS
1308 North Prospect Avenue
Milwaukee 2, Wisconsin
Counsel for Petitioners

Of Counsel:
PERCY W. PHILLIPS
H. STEWART DUNN, Jr.
JOHANNES R. KRAHMER
Southern Building
Washington 5, D. C.

INDEX

Page

Error in Question Presented 2

Distinction between a bank deposit and a savings account in a savings and loan 2

Reference to *Aetna Casualty and Surety Co. v. Porter,* No. 16,066, pending on Petition for a Writ of Certiorari 4

Illegality is not improved by age 6

Conclusion 6

CITATIONS

Aetna Casualty and Surety Co. v. Harry Clifford Porter, 185 Fed. Supp. 302 3

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1961

No. 502

WISCONSIN BANKERS ASSOCIATION,
a Wisconsin corporation, and
THE AMERICAN EXCHANGE BANK,
a Wisconsin banking corporation, and
COMMERCIAL STATE BANK,
a Wisconsin banking corporation, and
GRAFTON STATE BANK,
a Wisconsin banking corporation, and
THE BANK OF COMMERCE,
a Wisconsin banking corporation, and
KENOSHA NATIONAL BANK,
a National banking association organized and existing under the laws of the United States of America,

Plaintiffs-Petitioners,

vs.

ALBERT J. ROBERTSON, IRA DIXON, and WILLIAM J. HALLAHAN, comprising the FEDERAL HOME LOAN BANK BOARD, Washington, D. C.,

Defendants-Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

REPLY BRIEF FOR PETITIONERS, WISCONSIN BANKERS ASSOCIATION, ET AL.

The Brief in Opposition filed by the respondents contains certain material errors as to warrant the petitioners filing this Reply Brief.

Error in Question Presented

The Brief in Opposition erroneously states the "Question Presented" (Page 2). In said Brief, the statement of the question presumes that savings accounts in Federal Savings and Loans represent share interests therein. There is no legal justification for the erroneous presumption. Nowhere in the challenged regulations is there the slightest indication that anyone making payments in a savings account in a Federal Savings and Loan Association acquires a share interest. Independently of a failure of the regulations to prescribe a share interest status is the equally important fact that the challenged regulations and charter provisions provide for a withdrawal of payments in a savings account. (Paragraph 6 of Charter "N", Page 54 of petitioners' Petition for a Writ of Certiorari). How can there be a withdrawal of payments, if such payments had in fact been converted into a share (property) interest? Respondents should at least admit that there is here a high element of confusion that should be eliminated through these questions being considered by The United States Supreme Court.

To the contrary, the original regulations and charter provisions prescribe share capital, and also provide for a repurchase of share accounts. (Paragraphs 6 and 12 of Charter "K", Pages 53 and 54 of petitioners' Petition for a Writ of Certiorari).

Distinction between a bank deposit and a savings account in a savings and loan

The Brief in Opposition also erroneously concludes (as did both the District Court and the Appeals Court) that the challenged regulations and charter provisions are

valid simply because there is a legal distinction between a deposit in a savings and loan and a deposit in a commercial bank. Petitioners feel free in asserting that a payment to a Federal Savings and Loan Association is a deposit somewhat contrary to the attempts of respondents to avoid the use of such term.

In *Aetna Casualty and Surety Co. v. Harry Clifford Porter*, 185 Fed. Supp. 302, the United States District Court for the District of Columbia on July 14, 1960 stated:

> "Moneys deposited in a building association by the committee of a veteran have not 'lost the quality of moneys', they have not been 'converted' into 'property'."

The District Court in said case concluded that since deposits in a Federal Savings and Loan Association had not been converted into property, the deposits were not subject to attachment. Needless to restate the simple legal precept that if the deposits had been converted into a share interest, there would legally result a conversion into property. Although the decision of the District Court in the *Aetna Casualty and Surety Co.* case was reversed by the Court of Appeals for the District of Columbia, this same case is now before the United States Supreme Court on a Petition for a Writ of Certiorari, with the United States Government filing a Memorandum as amicus curiae in support of a petition for a Writ of Certiorari filed by a Veteran's Committee. In the instant case, the Federal District Court for the District of Columbia regularly referred to payments in a Federal Savings and Loan Association as "deposits".

Needless to state, when Judges of a Federal District Court conclude that payments in a Federal Savings and Loan Association are deposits, there is reason to suggest

there must be some justification for such conclusions.* Considering now the alleged distinction between a deposit in a Federal Savings and Loan Association and a deposit in a bank, such distinction fails when one compares the deposit status of a person making payments to a savings and loan with that of a person making payments to a mutual savings bank. A deposit in a Federal Savings and Loan Association is legally identical to a deposit in a mutual savings bank.

Equally important, the avowed distinction takes no cognizance of the fact that if the legal distinction exists, it is unknown to the persons making the payments. As emphasized in the Petition for a Writ of Certiorari (Pages 26-28), persons making payments to Federal Savings and Loan Associations intend to make deposits, and this intent should not be ignored by the Courts in determining the legal status of the payments made to Federal Savings and Loan Associations.

Reference to *Aetna Casualty and Surety Co. v. Porter*, No. 16,066, pending on Petition for a Writ of Certiorari

The Brief in Opposition notes that the United States has filed a Memorandum as amicus curiae in the *Aetna Casualty and Surety Co. v. Porter* case, 549 Miscellaneous, in support of a Veteran's Committee Petition for a Writ of Certiorari, which seeks to have this Court determine that amounts in a Federal Savings and Loan Association savings account are not subject to attachment. Presumably, such Petition would proceed on the legal ground

*If the Federal Courts find it difficult to understand Federal Savings and Loan Associations' procedures, how can the unsophisticated public that has placed billions of dollars in these Associations be expected to know what they are doing? It is unnecessary to suggest that these misunderstandings have caused a tortious invasion of petitioners' bank charter property rights.

that amounts in a Federal Savings and Loan savings account have not been used to purchase anything. If the Wisconsin Bankers Association, et al are correct in their assumption that payments in a Federal Savings and Loan Association are mere deposits, then the position of the Veteran's Committee in the *Aetna Casualty and Surety Co. v. Porter* case is legally correct.

Petitioners would emphasize that here is a direct example as to the weird results flowing from the challenged regulations. In brief, a Veteran's Committee had presumed that a savings account in a savings and loan represented a deposit procedure. Even more important, two Federal District Court Judges for the District of Columbia had also so concluded.

As with any incorrect procedure (or with any falsehood), it is dangerous to follow a course of error. Eventually there is reached the stage reflected in the Brief in Opposition (Page 9) that the Government (which should be above reproach) is trying to argue that an account in a savings and loan has the attributes of both an investment and an interest bearing deposit. Apparently the respondents are asking the United States Supreme Court to legally determine that distinctions between dividends and interest, and distinctions between a deposit and a share (property) interest, not to mention a procedure completely opposed to the statute provided by Congress, are to be disregarded merely to support a highly erroneous (and illegal) procedure promulgated by a Federal administrative agency. It is unnecessary to suggest that such request made of the highest Court in the land is untenable.

Incidentally, one might inquire as to what has happened to the law provided by Congress. What reason is there for explaining away the statutory requirement that Federal Savings and Loans shall raise their capital only

by payments on shares as are authorized in their charters, and that no deposits shall be accepted?

Illegality is not improved by age

The argument in the Brief in Opposition starts out with the assertion that the challenged regulations and charter provisions are "long standing". Such contention disregards the fact that an entirely different (and valid) set of regulations and charter provisions were promulgated by the Federal Home Loan Bank Board for the period from the inception of the law until 1949, which is a longer period than the challenged regulations have been in existence.

Secondly, petitioners know of no rule of law whereunder completely invalid and illegal regulations and charter provisions can acquire a legal status through any factor of age.

Conclusion

Petitioners would assert that the Brief in Opposition filed in this proceeding of and by itself presents reasons why the United States Supreme Court must consider this issue, and once and for all resolve the questions placed before this Court by the Petition for a Writ of Certiorari.

Respectfully submitted,

HARVEY W. PETERS
1308 North Prospect Avenue
Milwaukee 2, Wisconsin
Counsel for Petitioners

Date: November 22, 1961

Of Counsel:

PERCY W. PHILLIPS
H. STEWART DUNN, JR.
JOHANNES R. KRAHMER